

STATE BOARD OF EQUALIZATION

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Executive Secretary

April 14, 1987

Dear Mr. :

Your letter of March 6, 1987, has been referred to me for response. Unfortunately, this reply has been delayed so that it could be coordinated with responses to similar inquiries received from other members of the public.

You have asked three questions concerning Revenue and Taxation Code section 235, as added by Chapter 1457 of the Statutes of 1986 (AB 2890, Hannigan). This section provides:

235. For the purposes of this division, the lessee of tangible personal property owned by a bank or financial corporation shall be conclusively presumed the owner of that property.

We have set forth below your three questions together with our conclusions.

1) What is the intent and purpose of the provision?

Chapter 1457 was a major omnibus property tax measure. Its provisions were the result of an Assembly Revenue and Taxation Committee interim hearing on property tax issues held on December 5, 1985. This measure was not sponsored by the State Board of Equalization. It is our understanding that section 235 was added to the bill at the request of several counties, particularly _____ County.

2) If the intent was to provide that the lessees of such property are taxable, was this a change from prior law?

We understand that several counties are currently involved in litigation in Los Angeles County Superior Court which challenges the validity of certain assessments made against lessees of bank-owned property. That litigation should produce

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an answer to your question. Accordingly, we will defer our response until the courts have spoken on the issue.

- 3) Are the lessors required to report such property on their business property statements, even though the lessee is conclusively presumed to be the owner?

Section 235 of the Revenue and Taxation Code provides that the lessee of tangible personal property owned by a bank or financial corporation shall be conclusively presumed to be the owner of that property, for the purposes of Division 1 of the Revenue and Taxation Code. Division 1 relates to property taxation and includes various provisions providing for the assessment of property, and for the levy and collection of property taxes, etc. For the purposes of these provisions, therefore, an "owner" of property will include a lessee of the property described in section 235.

Revenue and Taxation Code section 441, which requires the filing of property statements, refers to "every person owning taxable personal property" in the first sentence. In light of section 235, we conclude that the latter reference should be construed as applying to lessees of tangible personal property owned by a bank or financial corporation. Thus, the first sentence of section 441 imposes an obligation on such lessees to file a signed property statement if the property has an aggregate cost of \$30,000 or more.

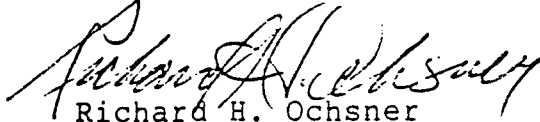
While a bank may not be treated as the owner of such property, for purposes of the first sentence in section 441, the bank is not necessarily relieved of its obligation to report such property on its property statement. We understand that the property statement includes a specific question requesting information on fixtures and tangible personal property which is leased or rented to others. Revenue and Taxation Code section 442 requires that the property statement show all taxable property owned, claimed, possessed, controlled, or managed by the person filing it. Further, the language of subdivision (d) of section 441 has been interpreted as granting broad power to the assessor to demand information necessary to the assessment process. (Roberts v. Gulf Oil Corp. (1983) 147 Cal.App.3d 770.) In light of these authorities, we conclude that banks and financial corporations are required to report leased tangible personal property on their property statements.

As you know, our conclusions are advisory in nature and are not binding upon any assessor. Thus, in determining the reporting obligations of any bank or financial corporation, you may wish

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to consult the assessor of the county in which the institution is located.

Very truly yours,


Richard H. Ochsner
Assistant Chief Counsel

RHO:cb
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cc: Honorable :
County Assessor
Ms.
County Deputy District Attorney
Mr. Dave Doerr, Consultant
Assembly Revenue and Taxation Committee
Ms. Margaret Shedd Boatwright